

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NGM INSURANCE COMPANY,

Plaintiff,

-against-

BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING,
BRIAN J. BLAKELY, PETER J. SLINGERLAND, NANCY
SLINGERLAND and PROGRESSIVE CASUALTY
INSURANCE COMPANY,

Defendants.

Docket No.: 07-CV-6517

**RESPONSE TO STATEMENT
OF UNDISPUTED FACTS
OF PLAINTIFF, NGM
INSURANCE COMPANY**

Pursuant to Local Rule 56.1, defendants, BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING and BRIAN J. BLAKELY, by their attorneys, Cook, Netter, Cloonan, Kurtz & Murphy, P.C. submit the following response to plaintiff, NGM Insurance Company's statement of undisputed facts:

1. Defendants admit 1-3, 5-9, 9-12, 15, and 16.
2. Defendants admit paragraph 4 except that the 2004 Dodge was operated by Brian J. Blakely as an employee of Blakely Pumping, Inc. and not as an Executive Officer. (Exhibit "G" pages 4-5, 16)
3. Defendants admit paragraph 8 except denies that portion which reads "does not provide coverage for automobiles owned by Executive Officers of Blakely Pumping, Inc."
4. Defendants admit the contents of paragraph "13" except denies that portion that reads "first request for coverage as a non-owned vehicle".
5. Defendants deny the inference in paragraph "14" that NGM's letter of August 4, 2006 was a timely disclaimer of coverage.

**DEFENDANTS, BLAKELY PUMPING, INC. d/b/a ASSENTIAL
PUMPING AND BRIAN J. BLAKELY, ADDITIONAL STATEMENT
OF MATERIAL FACTS:**

6. NOTICE BY NGM OF RELEVANT FACTS:

In January 2006, NGM was advised of all the relevant facts to make a determination as to whether coverage was available under its policy to Brian J. Blakely and Blakely Pumping, Inc. d/b/a Assential Pumping i.e. Brian J. Blakely was operating his 2004 Dodge pick-up truck when he was involved in an accident on November 3, 2005 with Peter J. Slingerland and at the time of the accident he was an employee of Blakely Pumping, Inc. and in the course of his employment with it and that he was named as a Vice President on the company's corporate books. (Exhibit "P)

7. DISCLAIMER UNDER WRONT PROVISIONS OF POLICY:

By letters dated February 1, 2006 and March 23, 2006 from NGM, it disclaimed coverage to Brian J. Blakely and Blakely Pumping, Inc. under the Business Owner Liability Coverage form Exclusion "g" which excluded coverage for bodily injury arising out of the use of an auto. NGM's policy of insurance issued effective July 13, 2005 contained Endorsement BP04360197 "Hired Auto and Non-Owned Auto Liability" which expressly deleted and replaced Exclusion "g". (Exhibit "P"; Exhibit "T"; Exhibit "Q" Business Owners Liability Coverage Form page 4 of 13 and BP04360197)

8. FIRST NOTICE OF DISCLAIMER PURSUANT TO THE HIRED AUTO AND NON-OWNED AUTO LIABILITY ENDORSEMENT:

By letter dated August 4, 2006 from Wendy A. Tulowiecki, Senior Claim Representative, NGM disclaimed coverage for the first time pursuant to the "Hired Auto and Non-Owned Auto Liability" endorsement. (Exhibit "V")

Dated: April 10, 2008

ROBERT D. COOK, ESQ. (RC5957)
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